

Passed by the House on May 2, 1997, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2297 on May 29, 1997, by a non-record vote; passed by the Senate, with amendments, on May 26, 1997, by a viva-voce vote.

Approved June 20, 1997.

Effective September 1, 1997.

CHAPTER 1409

H.B. No. 2324

AN ACT

relating to the organization and operation of certain prison industries in the Texas Department of Criminal Justice, the Texas Youth Commission, and certain county correctional facilities, to agricultural programs and work programs of the Texas Department of Criminal Justice, and to certain funds held in trust for inmates in the custody of the Texas Department of Criminal Justice; providing a penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapters A and B, Chapter 497, Government Code, are amended to read as follows:

SUBCHAPTER A. TEXAS CORRECTIONAL ~~[PRISON]~~ INDUSTRIES ~~[OFFICE]~~

Sec. 497.001. TEXAS CORRECTIONAL ~~[PRISON]~~ INDUSTRIES; *DEFINITIONS* ~~[OFFICE]~~. (a) Texas Correctional Industries ~~[The prison industries office]~~ is an office in the department.

(b) *In this subchapter and Subchapter B:*

(1) "Office" means Texas Correctional Industries.

(2) "Articles and products" include services provided through the use of inmate labor.

Sec. 497.002. PURPOSE; IMPLEMENTATION. (a) The purposes of the ~~[prison industries]~~ office are to implement this subchapter and Subchapter B to:

(1) provide adequate, regular, and suitable employment for the ~~[and]~~ vocational training and rehabilitation of inmates, consistent with proper correctional purposes;

(2) use the labor of inmates for self-maintenance;

(3) reimburse the state for expenses caused by the crimes of inmates and the cost of their imprisonment;

(4) provide for the requisition and disbursement of department articles and products through established state authorities to eliminate the possibility of unlawful private profit from the distribution of those articles and products;

(5) provide materials, products, or articles for sale to the public, to private enterprises, or to agencies of the state or political subdivisions of the state; and

(6) develop and expand public and private prison industry operations ~~[development and expansion of public and private prison industries]~~.

(b) To implement the purposes of the office, the department may establish and operate a prison industries program at each correctional facility that the department considers suitable for such a program.

Sec. 497.003. ADVISORY COMMITTEE. The board may establish a prison industries advisory committee. If the board establishes a prison industries advisory committee, the advisory committee must be ~~[is]~~ composed of nine members appointed by the board. Members of the advisory committee, if the advisory committee is established, serve staggered three-year terms with the terms of three members expiring February 1 of each odd-numbered year.

Sec. 497.004. INMATE LABOR, PAY. (a) The department shall use inmate labor in [the] prison industries [program] to the greatest extent feasible and shall develop and expand [the] prison industries [program] by pursuing arrangements with business for the use of inmate labor.

(b) The board may develop *by rule* and *the department may* administer an incentive pay scale for inmates who participate in [the] prison industries [program]. *Prison industries* [The program] may be financed through contributions donated for this purpose by private businesses contracting with the department. The department shall apportion pay earned by an inmate *in the same manner as is required by Section 497.051* ~~[under this subchapter to the following persons and entities, in amounts determined at the discretion of the department:~~

~~(1) persons to whom the inmate has been ordered by a court to pay restitution;~~

~~(2) the inmate's family and dependents;~~

~~(3) the state, as reimbursement for the cost of the inmate's confinement;~~

~~(4) the compensation to victims of crime fund, created by Article 56.54, Code of Criminal Procedure; and~~

~~(5) the inmate's trust fund].~~

Sec. 497.005. INDUSTRIAL REVOLVING ACCOUNT. (a) *The legislature may appropriate money to an industrial revolving account in the general revenue fund.*

(b) *The office shall administer the industrial revolving account.*

(c) *The office may use money in the industrial revolving account to purchase real property, erect buildings, improve facilities, buy equipment and tools, install or replace equipment, buy industrial raw materials and supplies, and pay for other necessary expenses for the administration of this subchapter and Subchapter B.*

(d) *The office shall remit money received from the sale of articles and products produced under this subchapter and Subchapter B to the comptroller to be deposited in the industrial revolving account.*

(e) *When the governor and the Legislative Budget Board determine that the industrial revolving account contains money in an amount that exceeds the amount necessary for the administration of this subchapter and Subchapter B, the governor and the Legislative Budget Board shall certify that fact to the comptroller, who shall transfer the excess amount to the unobligated portion of the general revenue fund.*

(f) *Section 403.095, Government Code, does not apply to the industrial revolving account.* ~~[PROCEEDS FROM PRISON INDUSTRIES. Proceeds received from the operation of a prison industries program shall be deposited in the industrial revolving fund. The proceeds may be used by the department for the administration of this subchapter.]~~

Sec. 497.006. CONTRACTS WITH PRIVATE BUSINESS. To encourage the development and expansion of [the] prison industries [program], the prison industries office may enter into necessary contracts related to the prison industries program. With the approval of the board, the office may enter into a contract with a private business to conduct a program on or off property operated by the department. *A contract entered into under this section must comply with the Private Sector/Prison Industry Enhancement Certification Program operated by the Bureau of Justice Assistance and authorized by 18 U.S.C. Section 1761. In determining under Section 497.051 the number of inmates employed in conditional work programs, the department shall count the number of inmates participating in a work program under a contract entered into under this section. Not more than 250 inmates may participate in work programs under contracts entered into under this section.*

Sec. 497.007. GRANTS. The [prison industries] office may accept any grant designated for inmate vocational rehabilitation. The office shall maintain records relating to the receipt and disbursement of grant funds, and shall annually report to the board on the administration of grant funds.

Sec. 497.008. LEASE OF LAND. To further the expansion and development of [the] prison industries [program], the department may lease prison land to a private business. A lease under this section may not exceed a term of 50 years. The business must lease the land at fair market value and may construct or convert plant facilities on the land.

Sec. 497.009. CERTIFICATION FOR FRANCHISE TAX CREDIT. The department or the [prison industries] office on behalf of the department shall prepare and issue a certification that a corporation requires to establish eligibility for the franchise tax credit for wages paid to inmates or employees who were inmates under Subchapter L, Chapter 171, Tax Code.

Sec. 497.010. OFFENSE: SALE OR OFFER OF SALE OF PRISON-PRODUCED ARTICLES OR PRODUCTS. (a) A person commits an offense if the person intentionally sells or offers to sell on the open market in this state an article or product the person knows was manufactured in whole or in part by an inmate of the department or an inmate in any correctional facility or reformatory institution in this state or in any other state, other than an inmate:

- (1) who was on community supervision, parole, or mandatory supervision;
- (2) employed by an enterprise that has employed the inmate in order to take advantage of the franchise tax credit offered under Subchapter L, Chapter 171, Tax Code, at the time of manufacture; or
- (3) participating in a federally certified prison industry enhancement program.

(b) An offense under this section is a Class B misdemeanor [COMPLIANCE. The prison industries office may enter into a contract with a private business under Section 497.006 only if the contract specifies that the prison industries office and the private business will comply with the Private Sector/Prison Industry Enhancement Certification Program operated by the Bureau of Justice Assistance and authorized by 18 U.S.C. Section 1761].

SUBCHAPTER B. SALES OF PRISON-MADE ARTICLES OR PRODUCTS [GOODS ACT OF 1963]

Sec. 497.021. AUTHORITY [SHORT TITLE]. This subchapter governs the sale of prison-made products to governmental agencies [may be cited as the Prison-Made Goods Act of 1963].

Sec. 497.022. CONTRACTS. The department may contract with:

- (1) another state, the federal government, a foreign government, or an agency of any of those governments to manufacture for or sell to those governments prison-made articles or products; or

- (2) a private school or a visually handicapped person in this state to manufacture Braille textbooks or other instructional aids for the education of visually handicapped persons [PURPOSE. The purpose of this subchapter is to:

[(1) provide adequate, regular, and suitable employment for the vocational training and rehabilitation of inmates, consistent with proper penal purposes;

[(2) use the labor of inmates for self-maintenance;

[(3) reimburse the state for expenses caused by the crimes of inmates and the cost of their confinement;

[(4) provide for the requisition and disbursement of institutional division articles and products through established state authorities to eliminate the possibility of private profits from the distribution of those articles and products; and

[(5) provide materials, products, or articles for sale to a private person or for the use of the state or a political subdivision of the state].

Sec. 497.023. [RULES. The board may adopt rules necessary for the administration of this subchapter.

[Sec. 497.024.] PRIORITIES. Under this subchapter and Subchapter A, the office [The institutional division] shall produce products and articles [administer this subchapter] first to fulfill the needs of agencies of the state [for articles and products produced under this subchapter,] and second to fulfill the needs of political subdivisions or other purchasers [for the articles and products].

[Sec. 497.025. PURCHASE OF EQUIPMENT AND SUPPLIES; EMPLOYMENT OF PERSONNEL. To provide articles and products to an agency of the state or a political

~~subdivision of the state, the institutional division may purchase equipment, raw materials, and supplies in the manner provided by law.]~~

Sec. 497.024 [497.026]. AGENCIES AND POLITICAL SUBDIVISIONS: DUTIES TO PURCHASE. (a) If the office [institutional division] produces an article or product under this subchapter, an agency of the state or a political subdivision may purchase the article or product only from the office [division].

(b) If the General Services Commission determines that an article or product produced by the office [institutional division] under this subchapter does not meet the requirements of an agency of the state or a political subdivision, or that the office *has determined* [institutional division of the Texas Department of Criminal Justice determines] that the office [division] is unable to fill a requisition for an article or product, the agency or subdivision may purchase the article or product from another source.

(c) An agency of the state or a political subdivision may not evade the intent of this subchapter by requesting an article or product that varies slightly from standards for articles or products established under Section 497.027 [497.029], if the office [institutional division] produces a similar article or product that is in compliance with established standards and is reasonably suited to the actual needs of the agency or subdivision.

Sec. 497.025 [497.027]. PURCHASING PROCEDURE. (a) An agency of the state that purchases articles and products under this subchapter must requisition the purchase through the General Services Commission except for purchases of *articles or products* [items or services] not included in an established contract. The purchase of *articles or products* [items] not included in an established contract and that do not exceed the dollar limits established under Section 2155.132 [3.08(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes)], may be acquired directly from the office [department] on the agency's obtaining an informal or a formal quotation for the item and issuing a proper purchase order to the office [department].

(b) A political subdivision may purchase articles and products under this subchapter directly from the office [institutional division].

(c) If an agency or political subdivision purchasing goods under this subchapter desires to purchase goods or articles from the office [division], it may do so without complying with any other state law otherwise requiring the agency or political subdivision to request competitive bids for the article or product. Nothing herein shall be interpreted to require a political subdivision to purchase goods or articles from the office [division] if the political subdivision determines that the goods or articles can be purchased elsewhere at a lower price. *An [or an] agency may decline to purchase goods or articles from the office [division] if the agency determines, after giving the office a final opportunity to negotiate on price, and the General Services Commission certifies, that the goods or articles can be purchased elsewhere at a lower price.*

Sec. 497.026 [497.026]. PRICES. The office [institutional division] and the [State Purchasing and] General Services Commission shall determine the sales price of articles and products produced under this subchapter.

Sec. 497.027 [497.026]. SPECIFICATIONS. (a) The [State Purchasing and] General Services Commission shall establish specifications for articles and products produced under this subchapter. An article or product produced under this subchapter must meet specifications established under this subsection in effect when the article or product is produced.

(b) The office [institutional division] may manufacture articles and products to meet commercial specifications for the article or product if the [State Purchasing and] General Services Commission has not established specifications for the article or product and the commission approves the commercial specifications.

Sec. 497.028 [497.030]. CATALOGS. The office [institutional division] shall prepare catalogs that accurately and completely describe articles and products produced under this subchapter. The office [institutional division] shall send copies of the catalogs to all state agencies and make the catalogs available to political subdivisions.

Sec. 497.029 [497.031]. NEW ARTICLES AND PRODUCTS. The [State Purchasing and] General Services Commission may request the office [institutional division] to produce additional articles or products under this subchapter.

Sec. 497.030 [497.032]. ~~[STATE PURCHASING AND]~~ GENERAL SERVICES COMMISSION REPORTS. (a) Not later than the 31st day before the first day of each fiscal year, the ~~[State Purchasing and]~~ General Services Commission shall submit to the office ~~[institutional division]~~ a report that summarizes the types and amounts of articles and products sold under this subchapter in the preceding nine months.

(b) Not later than the 100th day after the last day of each fiscal year, the ~~[State Purchasing and]~~ General Services Commission shall submit to the office ~~[institutional division]~~ a report that states the types and amounts of articles and products sold under this subchapter in the preceding fiscal year.

(c) A report submitted by the ~~[State Purchasing and]~~ General Services Commission under this section must describe the articles and products to the extent possible in the manner those articles and products are described in catalogs prepared under Section 497.028 [497.030].

~~[Sec. 497.033. INDUSTRIAL REVOLVING FUND. (a) The legislature may appropriate in the General Appropriations Act money to an industrial revolving fund.~~

~~[(b) The prison industries office established under Section 497.001 shall administer the industrial revolving fund.~~

~~[(c) The institutional division may use money appropriated to the industrial revolving fund to erect buildings, improve facilities, buy equipment and tools, install or replace equipment, and pay for other necessary expenses for the administration of this subchapter.~~

~~[(d) The institutional division shall deposit funds received from the sale of articles and products produced under this subchapter with the state treasurer to be maintained in the industrial revolving fund.~~

~~[(e) Subject to the approval of the board, the institutional division may use money deposited under Subsection (d) for the purposes described in Subsection (c), and for the employment of supervisors as necessary for the administration of this subchapter.~~

~~[(f) When the governor and the Legislative Budget Board determine that the industrial revolving fund contains money in an amount that exceeds the amount necessary for the administration of this subchapter, the excess amount shall be transferred by the institutional division to the general revenue fund.~~

~~[(g) Sections 403.004(h) and (i) do not apply to the industrial revolving fund.~~

~~[Sec. 497.034. SURPLUS PROPERTY AND AGRICULTURAL PRODUCTS. (a) The board may authorize the director of the institutional division to sell or dispose of surplus agricultural products and personal property owned by the institutional division, other than products or property produced for sale by the division.~~

~~[(b) Products and property described by Subsection (a) shall be sold under rules adopted by the board and at prices and terms set by the board.~~

~~[(c) The institutional division may use surplus agricultural lands to provide agricultural products to a nonprofit organization at no profit to the division.~~

~~[Sec. 497.035. OFFENSE: SALE OR OFFER OF SALE OF PRISON PRODUCED ARTICLES OR PRODUCTS. (a) A person commits an offense if the person intentionally sells or offers to sell on the open market in this state an article or product the person knows was manufactured in whole or in part by an inmate of the institutional division or an inmate in a correctional facility in any other state, other than an inmate:~~

~~[(1) who was on community supervision, parole, or mandatory supervision;~~

~~[(2) employed by an enterprise who has employed the inmate to advantage themselves of the Franchise Tax Credit offered under Subchapter L, Chapter 171, Tax Code, at the time of manufacture; or~~

~~[(3) participating in a federally certified prison industry enhancement program.~~

~~[(b) An offense under this section is a misdemeanor punishable by:~~

~~[(1) a fine of not less than \$10 or more than \$500;~~

~~[(2) confinement in jail for a term of not less than 10 days or more than one year; or~~

~~[(3) both such fine and confinement.]~~

SECTION 2. Section 497.091, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The department may contract with nonprofit organizations that provide services to the general public and enhance social welfare and the general well-being of the community to provide inmate labor to those organizations.

SECTION 3. Subchapter F, Chapter 497, Government Code, is amended by adding Section 497.113 to read as follows:

Sec. 497.113. SURPLUS AGRICULTURAL PROPERTY AND PRODUCTS. (a) The board may authorize the sale or disposal of surplus agricultural products and personal property owned by the department, other than products or property produced for sale by the department.

(b) Products and property described by Subsection (a) shall be sold under rules adopted by the board and at prices and terms set pursuant to those rules.

(c) The department may use surplus agricultural capacity to provide agricultural products to a nonprofit organization at no profit to the department.

SECTION 4. Section 38.111(a), Penal Code, is amended to read as follows:

(a) An inmate of the institutional division or a person confined in a state jail felony facility commits an offense if with intent to obtain a benefit or with intent to harm or defraud another the inmate or person possesses, discloses, or uses personal information about another that the inmate or person has access to by means of participation in a work program operated by or for the institutional division or state jail division.

SECTION 5. Section 61.123, Human Resources Code, is amended to read as follows:

Sec. 61.123. PAY AND DISTRIBUTION OF PAY. The commission shall apportion wages earned by a child working under the industries program in amounts determined at the discretion of the commission, in the following priority:

(1) a person to whom the child has been ordered by a court or to whom the child has agreed to pay restitution;

(2) a person to whom the child has been ordered by a court to pay child support; [and]

(3) the compensation to victims of crime fund or the compensation to victims of crime auxiliary fund; and

(4) the child's student account.

SECTION 6. Chapter 63, Civil Practice and Remedies Code, is amended by adding Section 63.006 to read as follows:

Sec. 63.006. GARNISHMENT OF FUNDS HELD IN INMATE TRUST FUND. (a) A writ of garnishment may be issued against an inmate trust fund held under the authority of the Texas Department of Criminal Justice under Section 501.014, Government Code, to encumber money that is held for the benefit of an inmate in the fund.

(b) The state's sovereign immunity to suit is waived only to the extent necessary to authorize a garnishment action in accordance with this section.

SECTION 7. Sections 501.014(e) and (f), Government Code, are amended to read as follows:

(e) On notification by a court, the department [institutional division] shall withdraw from an inmate's trust fund account any amount the inmate is ordered to pay by order of the court under this subsection [for child support, restitution, fines, and court costs]. The department [institutional division] shall make a payment under this subsection as ordered by the court to either the court or the party specified in the court order. The [institutional division and the] department is [are] not liable for withdrawing or failing to withdraw money or making payments or failing to make payments under this subsection. The department [institutional division] shall make withdrawals and payments from an inmate's trust fund account under this subsection according to the following schedule of priorities:

(1) as payment in full for all orders for child support;

(2) as payment in full for all orders for restitution;

(3) as payment in full for all orders for court fees and costs [fines]; [and]

- (4) as payment in full for all orders for fines; and
- (5) as payment in full for any other court order, judgment, or writ ~~(court costs)~~.
- (f) The department ~~(institutional division)~~ may place a hold on funds in or withdraw funds from an inmate trust fund account:
 - (1) to restore amounts withdrawn by the inmate against uncollected funds;
 - (2) to correct accounting errors;
 - (3) to make restitution for wrongful withdrawals made by an inmate from the trust fund of another inmate;
 - (4) to cover deposits until cleared;
 - (5) as directed by court order in accordance with Subsection (e); ~~or~~
 - (6) as part of an investigation by the department of inmate conduct involving the use of trust funds or an investigation in which activity in the trust fund is evidence; or
 - (7) to transfer funds deposited in violation of law or department policy.

SECTION 8. The changes in law made by this Act to Section 63.006, Civil Practice and Remedies Code, apply only to a writ of garnishment issued against an inmate trust fund on or after the effective date of this Act. A writ of garnishment issued against an inmate trust fund before the effective date of this Act is governed by the law as it existed before the effective date of this Act, and that law is continued in effect for this purpose.

SECTION 9. Section 496.051, Government Code, and Section 1, Chapter 86, Acts of the 47th Legislature, Regular Session, 1941 (Article 9007, Vernon's Texas Civil Statutes), are repealed.

SECTION 10. (a) The changes in law made by this Act to Section 497.010, Government Code, and Section 38.111, Penal Code, apply only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 11. This Act takes effect September 1, 1997.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 14, 1997, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2324 on May 28, 1997, by a non-record vote; passed by the Senate, with amendments, on May 24, 1997, by a viva-voce vote.

Approved June 20, 1997.

Effective September 1, 1997.

CHAPTER 1410

H.B. No. 2332

AN ACT

relating to permitting the Board of Regents of The University of Texas System to convey an interest in certain real property to a political subdivision located in Hidalgo County.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. (a) The Board of Regents of The University of Texas System may enter into a contract with any political subdivision located in Hidalgo County to convey to the